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November 27, 2006

Gregg J. Corbo, Esq.  
Kopelman & Paige, PC  
101 Arch Street, 12<sup>th</sup> Floor  
Boston, MA 02110

Re: Waters v. Town of Ayer et al., No. 04 Civ. 10521

Dear Mr. Corbo:

I write in response to your letter dated November 17, 2006. With respect to the privilege log associated with plaintiff's November 10, 2006 Supplemental Rule 34 Disclosure, you argue that the assertion of attorney work product privilege is inappropriate because the mental impressions of Mr. Waters' criminal defense attorneys is allegedly "the central issue in this case." While plaintiff's *Brady* claim has arguably placed a narrow scope of attorney work-product at issue – and as such we will produce certain documents identified below – the *Brady* claim does not vitiate the privilege as to all work product. In the context of attorney-client privilege, courts have recognized that "[a]n 'at issue' waiver, in circumstances where it is recognized, should not be tantamount to a blanket waiver of the entire attorney-client privilege in the case." *Fed. Deposit Ins. Corp. v. R.W. Beck, Inc.*, No. Civ.A.01.-CV-11982RGS, 2004 WL 1474579, at \*2 (D. Mass. July 1, 2004) (quoting *Darius v. City of Boston*, 433 Mass. 274, 283 (2001)). As a result, "a court is obligated to craft its order in such a way 'so as to limit the permissible discovery to what is truly 'at issue'" *Id.* (quoting *Darius*, 433 Mass. at 283).

With these principles in mind, your request for a broad disclosure of all work product, even by Mr. Waters' post-conviction attorneys, is overbroad and unreasonable. Plaintiff's *Brady* claim alleges that the failed to disclose exculpatory evidence to the prosecutor and Mr. Waters' trial attorney, Bernard Bradley. At most, plaintiff has arguably placed at issue Mr. Bradley's underlying knowledge concerning the exculpatory evidence at the time of the trial. As such, plaintiff only acknowledges that work-product privilege may be waived with respect to documents reflecting the mental impressions, conclusions, opinions, or legal theories of Mr.

Bradley prior to Mr. Waters' conviction. Therefore, plaintiff hereby discloses Mr. Bradley's pre-conviction correspondence or notes that you identified in your letter, without waiver of any other privileges.

Sincerely,

*Monica R. Shah*

Monica R. Shah

Enclosures

cc.: Rob Feldman, Esq. (w/o encl.)

## PRIVILEGE LOG

<u>DOCUMENT #</u>	<u>DESCRIPTION</u>	<u>DATE OF DOCUMENT</u>	<u>EXPLANATION OF PRIVILEGE</u>	<u>WAIVER</u>
BAW00048	Hand-written note re: case law		Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	
BAW00061	Type-written notes re: DeSimone's investigation	7/6/1983	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	
BAW00081	Notes from interview with Roseanna Perry	3/23/2001	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	
BAW00085	Hand-written notes re: Randall interview	4/4/2001	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	
BAW00094	Hand-written notes re: probable cause hearing	11/5/82	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	
BAW00098	Bradley's hand-written notes		Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	Waived privilege and produced document in letter dated 11/27/06
BAW00114	Bradley's hand-written notes re: call from Fahey, Waters' interview	10/14/1982	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	Waived privilege and produced document in letter dated 11/27/06
BAW00119	Phone message re: conversation between Waters and Everett Lapore	11/30/1982	Attorney-Client Privilege; Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	Waived privilege and produced document in letter dated 11/27/06

BAW00122	Notes of phone conversation between Waters and Everett Lapore (duplicate of BAW00119)	11/3/1982	Attorney-Client Privilege; Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	Waived privilege in letter dated 11/27/06
BAW00132	Correspondence from Bradley to Morgan	2/2/1983	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	Waived privilege and produced document in letter dated 11/27/06
BAW00133	Hand-written notes		Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	
BAW00137	Correspondence from Bradley to Morgan	3/29/1983	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	Waived privilege and produced document in letter dated 11/27/06
BAW00139	Correspondence from Bradley to Morgan	2/25/1983	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	Waived privilege and produced document in letter dated 11/27/06
BAW00162	Correspondence from Betty Anne Waters to Santo re: Connors' affidavit, fingerprint and alibi evidence	11/3/1999	Attorney-Client Privilege; Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	
BAW00365	Correspondence from Peters to DeSimone re: Perry Hearing	7/11/1985	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	
BAWadd8	Waters' case list		Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	
CPCS000001	Defense attorney's notes re: Waters' Case	5/24/1983- 5/29/84	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	
CPCS000003	Defense attorney's notes re: Waters' Case	10/18/1982-	Attorney Work	Waived privilege

		5/11/83	Product (Fed. R. Civ. P. 26(b)(3))	and produced document in letter dated 11/27/06
CPCS000019	Appeal referral form	5/12/1983	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	
CPCS000029	Intake form	10/8/1982	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	
CPCS000030	Appeal referral form (duplicate of CPCS000019)	5/12/1983	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	
IP00419	Typewritten notes re: Waters' investigation	11/30/1999	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	
IP00429	Correspondence from DeSimone to Bradley re: police reports indicating that fingerprint comparisons were completed	1/13/1984	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	
IP00430	Typewritten notes re: Waters' investigation (duplicates first four pages of IP00419)		Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	
IP00434	Status Report		Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	
IP00436	Status Report		Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	
IP00437	Status Report		Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	
IP00443	Notes re: forensic evidence		Attorney Work Product (Fed. R. Civ. P. 26(b)(3))	

IP00444	Hand-written notes		Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00446	Hand-written notes		Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00457	Status Report	2/8/2001	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00483	Status Report	2/8/2001	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00487	Status Report	8/7/2001	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00491	Status Report	4/5/2000	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00674	Correspondence from Santo re: status of case	5/16/2000	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00677	Correspondence from Betty Anne Waters re: Perry Affidavit	4/17/2001	Attorney-Client Privilege; Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00686	IP Final Report	4/24/2001	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00803	Correspondence from Betty Anne Waters to Scheck re: trial transcripts, forensic evidence	6/29/1999	Attorney-Client Privilege; Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00806	Correspondence from Waters to Scheck re:	10/31/1999	Attorney-Client

	accepting case		Privilege; Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00808	Correspondence from Betty Anne Waters to Santo re: Perry affidavit, fingerprint and alibi evidence (duplicate of BA W00162)	11/30/1999	Attorney-Client Privilege; Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00814	Correspondence from Betty Anne Waters to Santo re: locating Perry, employee who gave Kenny ride home	12/6/1999	Attorney-Client Privilege; Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00819	Transfer Memo	5/16/2000	Attorney-Client Privilege; Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00820	Transfer Memo	8/7/2000	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00822	Memorandum re: status of case	3/20/2001	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00832	Correspondence re: Emergency Unopposed Motion for New Trial	4/17/2001	Attorney-Client Privilege; Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00904	Correspondence from Santo to Dr. Blake re: stipulation and split evidence	4/24/2000	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00907	Correspondence from Santo to Dr. Blake re: stipulation and split evidence (duplicate of IP00904)	4/24/2000	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00915	Correspondence from Santo to Dr. Blake re: description of Waters' case	2/23/2000	Attorney Work Product (Fed. R. Civ. P. 26(b)(3))

IP00931	Correspondence from Betty Anne Waters to Santo re: laboratory reports	2/8/2000	Attorney-Client Privilege; Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00949	Correspondence from Betty Anne Waters to Santo re: visit with Kenny	11/11/1999	Attorney-Client Privilege; Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00971	Correspondence from Waters to Scheck re: accepting case (duplicate of IP00806)	10/31/1999	Attorney-Client Privilege; Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00975	Correspondence from Betty Anne Waters to Neufeld and Scheck re: Waters' IP application	11/20/1999	Attorney-Client Privilege; Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00978	IP Intake Form		Attorney-Client Privilege
IP00982	Correspondence from Betty Anne Waters to Dao re: status of Waters' case	7/12/1999	Attorney-Client Privilege; Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00986	Correspondence from Dao to Betty Anne Waters re: status of Waters' case	7/11/1999	Attorney-Client Privilege; Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00989	Correspondence from Dao to Betty Anne Waters re: status of Waters' case	7/12/1999	Attorney-Client Privilege; Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00990	Correspondence from Betty Anne Waters to Dao re: motion to preserve	7/12/1999	Attorney-Client Privilege; Attorney Work Product (Fed.

IP00993	Correspondence from Dao to Betty Anne Waters re: sample legal motions	7/1/1999	R. Civ. P. 26(b)(3)) Attorney-Client Privilege; Attorney Work Product (Fed. R. Civ. P. 26(b)(3))
IP00994	Correspondence from Betty Anne Waters to Scheck re: trial transcript missing pages	8/12/1999	Attorney-Client Privilege; Attorney Work Product (Fed. R. Civ. P. 26(b)(3))